ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications Capability	)	
To All Americans in a Reasonable And	)	CC Docket No. 98-146
Timely Fashion, and Possible Steps	)	
To Accelerate Such Deployment	)	
Pursuant To Section 706 of the	)	
Telecommunications Act of 1996	)	
	)	

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby replies to the comments filed by Intel Corporation ("Intel") on September 18, 2001 in the above-referenced proceeding. CompTel is the premier industry association representing competitive telecommunications providers and their suppliers. CompTel's members provide local, long distance, international, Internet and enhanced services throughout the nation. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future. Given its interests, CompTel previously has participated in this proceeding, and it is directly interested in the comments filed by Intel and other parties last month.

In its comments, Intel recommended that the Commission commence a new proceeding to explore, among other things, the use of the Commission's Section 10 forbearance authority to deregulate the last-mile facilities of the incumbent local exchange carriers ("ILECs"). While CompTel shares Intel's desire to promote investment in advanced communications capabilities, CompTel strongly opposes Intel's forbearance suggestion. The

FCC lacks the authority to deregulate the ILECs' last-mile facilities, and it would be a profoundly misguided and counter-productive step for the Commission to pursue such deregulation. The best way to promote infrastructure investment is to adopt pro-competitive rules and to enforce vigorously the obligations imposed upon ILECs by Congress in the Telecommunications Act of 1996 and by this Commission in the rules it has promulgated over the past five years to implement that statute.

It should be underscored that the task of implementing and enforcing the 1996 Act does not fall to the Commission alone. The Congress deliberately and appropriately gave a significant role to state regulators in ensuring that the statute achieves its objectives. *See, e.g.,* 47 U.S.C. §253(b). By strengthening its ties with state regulators, and by coordinating regulatory and enforcement efforts with those regulators and their industry associations, the Commission can maximize the impact of its finite resources in promoting local competition.

I. THE FCC LACKS THE AUTHORITY TO DEREGULATE THE ILECS' LAST MILE FACILITIES.

Intel urges the Commission to implement its responsibilities under Section 706(a) of the Telecommunications Act of 1934 (*see* 47 U.S.C. § 157 note) by "deregulating all new, last mile broadband investment to encourage the fastest possible deployment of the highest speed technology." Intel Comments at 2. The Commission has several times addressed the question of whether Section 706 constitutes an independent grant of forbearance authority to the Commission. Each time the Commission has concluded that "section 706(a) does not constitute an independent grant of forbearance authority or of authority to employ other regulating methods." *See Deployment of Wireline Services Offering Advanced Telecommunications*

Capability, 13 FCC Rcd 24011, 24044 (1998), *aff'd on reconsideration*, 15 FCC Rcd 17044 (2000). This is a dead horse and it is time for the ILECs and their supporters to stop beating it.

The Commission's forbearance authority is spelled out in detail in Section 10 (47 U.S.C. § 160), which provides that the Commission may not forbear from the requirements in Section 251(c) or Section 271 "until it determines that those requirements have been fully implemented." Even though we have passed the fifth anniversary of the Telecommunications Act of 1996, it is abundantly clear that the requirements of Section 251(c) have not been "fully implemented" by the ILECs. As a result, the Commission lacks the authority to engage in the type of deregulation suggested by Intel.

Nor can CompTel support Intel's proposal for a new Commission proceeding to explore deregulatory options for last-mile facilities. The Commission should allocate whatever resources it has available to the enforcement of existing statutory and regulatory provisions, and to the resolution of outstanding local competition issues, such as the ongoing rulemaking and reconsideration proceedings regarding unbundled network elements ("UNEs") and UNE combinations in CC Docket No. 96-98. The current lack of enforcement, and the Commission's failure to resolve critical local competition issues for years and years, have created severe and accelerating competitive distortions, which have been compounded by the difficult economic and capital climate of the last 18 months. While CompTel normally is willing to support any proceeding that is intended to promote advanced communications infrastructure, in this case any available resources should be dedicated to enforcement and to the swift resolution of outstanding proceedings, particularly since Intel's proposal appears designed simply to rehash arguments about the Commission's Section 706 authority which were laid to rest long ago.

II. VIGOROUS ENFORCEMENT OF THE STATUTE AND THE FCC'S PRO-COMPETITION REGULATIONS IS THE BEST WAY TO PROMOTE THE DEVELOPMENT OF ADVANCED COMMUNICATIONS CAPABILITIES

CompTel strongly agrees with Intel that investment in advanced communications capabilities, including last-mile facilities, must be encouraged. However, CompTel submits that Intel's proposed solution – deregulating the ILECs' last-mile facilities – will achieve precisely the opposite result. As Intel notes repeatedly in its comments, investment in this new infrastructure will be "risky." Removing all competitors from the playing field – which is the effect that Intel's proposal will have – almost guarantees that this investment will not occur. The ILECs have a proven track record of not making any creative or "risky" investments when they face little or no competition. As one illustration, for years the customer premises equipment (CPE) industry languished while a monopoly carrier controlled that market. As soon as competition was introduced, the industry and consumers witnessed an explosion of choices, technology and investment. *See Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations,* 22 CR 2199, 65 FR 34629 (May 22, 2000).

Moreover, Intel's exact proposal has already been tested, and it has failed. Today those ILECs qualifying as "rural telephone companies" are exempt from the market-opening provisions in Section 251(c) of the Communications Act. *See* 47 U.S.C. §§ 153(37) & 251(f). In effect, these ILECs' last-mile facilities have been deregulated from the very onset of the 1996 Act. Were Intel's thesis correct, we should have seen significant investment by those companies in advanced communications infrastructure. In fact, such investment has not occurred after more than five years. Freed from competitive challenges, the rural ILECs have avoided any "risky" infrastructure investments. It is a sure bet that the ILECs subject to Section 251(c) will engage in similar behavior if freed of the pro-competitive obligations of Section 251(c).

Further, the very investment project that Intel cites with apparent approval – SBC's Project Pronto – shows the benefits of not deregulating last-mile facilities. It is doubtful that SBC would have implemented an infrastructure investment proposal of this geographic and financial scope had it not been challenged by numerous new entrants into the local market in its territory. It is precisely because SBC was required to share its local network with new competitors that it moved to create new revenue opportunities through additional "risky" investment. Had Intel's proposal been adopted several years ago, SBC might never have initiated the infrastructure upgrade embodied by Project Pronto.

One need look no further than the DSL market segment to see how the ILECs will treat consumers when freed from competitive restraints. Buoyed by the promises of the 1996 Act, numerous entrants sought to provide DSL services in competition with the ILECs, and the ILECs responded by increasing the scope and timetable for their own DSL-related investments. (Project Pronto was one such investment project.) However, due to many factors, including the unchecked failure of the ILECs to perform necessary provisioning in a timely and effective manner, the DSL competitors have been forced from the marketplace. Once that occurred, it did not take the ILECs very long to begin raising DSL rates for consumers. *E.g.*, B. Ploskina & D. Coffield, "Top-Dollar DSL," Interactive Week (Feb. 18, 2001) (noting $10/month DSL rate increases introduced by Bell Companies after DSL competitors exited the market). This shows that if the ILECs are free from competitive constraints, they will dampen consumer demand (rather than increasing it, as Intel and CompTel desire) through monopoly pricing. Competition is critical to ensuring that advanced communications services are priced at levels that will sustain growth and achieve the "critical mass of U.S. households" that Intel sees as critical to the development of this industry segment. *See* Intel Comments at 2.

Intel re-asserts the ILECs' weather-beaten argument that removing the market-opening requirements of the 1996 Act will encourage new entrants to build competing facilities. It is difficult to accept that Intel really believes that argument. Certainly, Congress has never accepted that argument. Congress recognized in 1996 that new entrants would need to share the ILECs' monopoly local networks in order to sustain entry into the local market. That is why Congress required the ILECs to provide interconnection, UNEs, local exchange resale, and collocation to new entrants at cost-based rates. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, CC Docket No. 96-98, 11 FCC Rcd. 15499, paras. 618-625 (1996) (subsequent history omitted). Without those requirements, a few new entrants would continue to build limited facilities in a few large cities, just as they had been doing before the 1996 Act was adopted. With those requirements, new entry is expanded, and multiple carriers will have the ability to develop the customer base, back-office systems, regional presence, and network infrastructure to support extensive new facility deployment throughout the United States over the long term. Deregulating the ILECs' last-mile facilities will take the industry back to precisely where it was before Congress adopted the 1996 Act – little competition; technological stasis; high retail prices; and sluggish infrastructure development.

Moreover, as Intel apparently agrees, the development of advanced services will be stunted unless the industry finds a way to deliver these services affordably on a mass market basis, including to large numbers of U.S. households. *See* Intel Comments at 6. However, deregulating the ILECs' last-mile facilities will ensure that only large business customers will have any meaningful alternatives. Smaller businesses and individual consumers will have a few high-priced ILEC services, such as DSL, and the ILECs will slow and perhaps stop any further investment in the underlying infrastructure needed to bring truly advanced services (*i.e.,* 6 MBPS

or more) to households across the United States. The only way to ensure that advanced services are deployed broadly across the country at affordable rates is to promote sustainable new entry by multiple competitive providers. That objective requires strong pro-competition rules and vigorous enforcement of those rules, not capitulation to the ILECs' intransigence through deregulation of their last-mile facilities.

The bottom line is that infrastructure investment is maximized only in a fully competitive environment. New entrants will invest in order to take advantage of the opportunities afforded them by the 1996 Act, and ILECs will invest to establish new sources of revenues to compensate for the new entrants' market inroads. We do not have such a competitive environment today – not even close to it, unfortunately – due to several factors, not the least of which is the ILECs' ability to ignore the Commission's pro-competition regulations with impunity. The Commission's puzzling inability to resolve pending issues in CC Docket No. 96-98 and other proceedings also has contributed to the slow-down in local competition. While CompTel supports deregulation whenever possible, the truth is that tough regulations and strong-willed enforcement are necessary to transform monopoly into competition. It is no coincidence that the trend towards slower broadband growth lamented by Intel (*see* Intel Comments at 2) coincides precisely with the slow-down in local competition over recent months. Investment and competition go hand-in-hand; promoting the latter is the most effective way of promoting the former in the United States.

III. CONCLUSION

CompTel submits that the Commission does not have the authority to deregulate the ILECs' last-mile facilities, and that even if it had such authority, such deregulation would

defeat rather than promote the public interest in having a fully developed advanced communications infrastructure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Theresa A. Baum, hereby certify that on this 9th day of October, 2001, copies of the Reply Comments Of The Competitive Telecommunications Association in CC Docket No. 98-146 were served by hand or first-class mail on the following:

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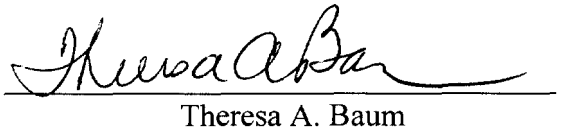

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